



**MOTOR VEHICLE  
FUEL LICENSE TAX ANNOTATIONS**



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**A**

**ALLOWABLE LOSSES OF COMMISSION AGENTS—Regulation 1117**

1012.430 **Losses Billed Tax Included.** Where agents are billed for losses on a tax included basis, the gallonage must be included in taxable distributions on the assumption that the loss represents fuel used by the agent or otherwise distributed. 6/4/64.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS



**B**

**BLENDING OR COMPOUNDING—Regulation 1103**

*See also Motor Vehicle Fuel.*

**BROKER**

*See Issuance of a Limited Distributor's License; Temperature-Corrected Distributions.*

**BROKER'S PURCHASE RECORD—Regulation 1175**

**BROKER'S SALES RECORD—Regulation 1176**

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

## C

**CONFINES AND LIMITS OF A CONSTRUCTION PROJECT—Regulation 1113****CONSIGNMENT FOR SALE—Regulation 1104**

**1091.100 Contract—Not Essential.** A distributor who is reimbursed by his sublease operators on the basis of volumetric gallons pumped from the station must report on the basis of volumetric gallons delivered to the consignee-operated stations.

It is immaterial that the distributor does not have a consignment contract with the sublease operators. The fact that he is reimbursed on the basis of volumetric gallons pumped from the station is sufficient to consider the deliveries as distributions. 9/29/70.

**1091.120 Delivery to Dealer's Premise.** A distributor has agreements with certain of its dealers whereby it purports to lease the fuel tanks on the premises of the dealers for the storage of gasoline. All of the tanks are connected to the dealer's pumps and the dealers are allowed to withdraw gasoline from the tanks and sell the gasoline to their customers. Title to the gasoline remains in distributor until the gasoline is sold to the consumer.

When the distributor withdraws motor vehicle fuel from its storage tanks and delivers the fuel into the tanks on the dealer's premise that transaction is a "consignment for sale" within the meaning of Section 7305(e) of the Revenue and Taxation Code, and, accordingly, is a taxable distribution at that time. 8/11/69.

**1091.320 Independent Operator.** A person is an independent operator, not an employee of the distributor, when he pays tax on his employee's wages, and makes deductions from their wages for income tax withholding and social security. 6/15/66.

**CONTAMINATED AVIATION FUEL**

*See Distribution*

**CREDITS AND REFUNDS**

*See also Distributions to the United States; Exempt Sales of Jet Fuel; Highway; Shipments Outside of the State.*

**1094.110 Claim for Refund Credited to Another Taxpayer.** A motor vehicle fuel distributor may file a claim for refund pursuant to Revenue and Taxation Code Section 8126 and request that the refund be applied to the account of another distributor. However, the payment will be credited to the other distributor's account as of the date the refund is made, rather than the date the original payment was made, as there is no statutory authority for transferring amounts between different taxpayers' account. The claim for refund must be filed within the statute of limitations set forth in Section 8128. 5/4/98. (M99-1).

**CREDITS AND REFUNDS (Contd.)**

- 1094.120 **Donations by Distributors.** Gasoline donated by distributors for use in racing cars must be included in taxable distributions and the tax paid thereon by the distributor; notwithstanding that the donees may have subsequently used the fuel in operating racing cars off the public highways. 7/26/65.
- 1094.550 **Only Users are Eligible for Refunds.** A sale of fuel to another is not a use of the fuel within the provisions of Section 8101 of the Revenue and Taxation Code. Specific statutory authorization to make a fuel tax refund is essential in all cases. 3/7/62.
- 1094.590 **Public Utility District.** A public utility district does not have any preferred exemption by reason of its being a utility district. It is entitled to file a claim for refund of the tax to the same extent as any other person or governmental agency. 4/25/63.
- 1094.690 **Schools Not Exempt.** Tax is imposed upon the manufacturers and importers of the fuel when it is first distributed within the state. The law does not provide for exemption of gasoline distributed by such distributors to either public, private, or parochial schools. 7/23/65.

## D

**DEPOSITS IN LIEU OF SURETY BONDS—Regulation 1146****DISTRIBUTION**

*See also Exempt Distributions to Distributors Qualified to Acquire Motor Vehicle Fuel Ex-Tax; Motor Vehicle Fuel.*

**1123.090 Contaminated Aviation Fuel.** The sale by the United States Navy was not a taxable distribution. There was no distribution of the contaminated aviation fuel as a motor vehicle fuel until it was sold by the petitioner after being mixed or blended with regular or ethyl gasoline in the storage tanks at his service station. 4/16/57.

**1123.230 Gasoline in U. S. Bond.** When gasoline is received under U. S. Government Bond and is transported through California under bond, the shipment is moving in foreign commerce and is therefore beyond our jurisdiction to regulate or tax. 7/5/60.

**1123.660 Redistributions.** The terms “redistributes” and “redistributed” have the same meaning as attributed to the word “distribution” as defined in Section 7305(e) of the Revenue and Taxation Code which includes the withdrawal of motor vehicle fuel from storage and the sale or consignment for sale of the fuel. 2/13/63.

**1123.780 Use by Distributor.** Under the definition of distribution, Section 7305(a) or 7305(e) of the Revenue and Taxation Code, it is clear that either the use of motor vehicle fuel in this state or the withdrawal of the fuel for use in this state, is a taxable distribution by an oil company, manufacturer or refiner, even though the fuel is used to propel vessels. 8/19/71.

**1123.850 Where Distribution Occurs.** “X” qualified distributor is the importer of gasoline unloaded from its vessel into its storage leased from “Z” limited distributor. The tax applies to the distributions made by “X” qualified distributor to “Z” limited distributor from such storage at the time the fuel is withdrawn by “Z” limited distributor. “X” qualified distributor is not the importer of gasoline sold to “Z” limited distributor prior to entry into the state with title to the gasoline passing to “Z” limited distributor at the flange of the vessel and with “Z” limited distributor receiving the gasoline into its storage. Such transactions being in interstate commerce, “Z” limited distributor is the importer of the fuel and “X” qualified distributor is not a distributor of the fuel in California. “X” qualified distributor should not report such sales as distributions within the state. 5/13/66.

**DISTRIBUTION OF COMMINGLED PRODUCT CONTAINING TAX-PAID GALLONAGE—Regulation 1118****DISTRIBUTIONS TO REPRESENTATIVES OF FOREIGN GOVERNMENTS—Regulation 1135**

**DISTRIBUTIONS TO THE STATE AND ITS POLITICAL  
SUBDIVISIONS—Regulation 1136**

- 1130.600 **Public Agencies Not Exempt.** The tax is one that is imposed upon motor vehicle fuel distributors (oil companies) for the privilege of distributing motor vehicle fuel in this state (Section 7351, Revenue and Taxation Code). It is not upon the consumer of motor vehicle fuel so that the tax applies with respect to sales to municipalities and other public agencies (*Rio Grande Oil Co. v. City of Los Angeles* 6 Cal.App.2d 200). Thus, the State of California, and all of its agencies, including universities and state colleges, pays the same tax reimbursement to the vendors of gasoline as does any other purchaser of the fuel. Neither is there any exception in such instances for school districts. Even the United States Post Office Department pays tax reimbursement as part of the purchase price of the gasoline used in its vehicles. 2/1/63.

**DISTRIBUTIONS TO THE UNITED STATES—Regulation 1134**

- 1135.020 **Armed Forces Ships—Defined.** Ships, as defined in Section 7401(d) of the Revenue and Taxation Code, should be considered to include all vessels which are not propelled by oars or paddles. This interpretation would be consistent with the purpose of the amendments in 1947 which changed the law and resulted in the taxation of fuel consumed by the United States Government on the highways of this state. By eliminating the previous exemption which the United States Government enjoyed, it resulted in the Federal Government paying its fair share of the cost of the highways in this state which it uses. The purpose of the 1968 amendments was to provide funds for boat facilities which generally are not used by the military. Under these circumstances, a broad interpretation of what constitutes a ship is appropriate. 8/21/69.

- 1135.040 **Base Operations Fuel Taxable.** The California motor vehicle fuel license tax is imposed on the distributor making the first distribution of the fuel in this state. Distributions of motor vehicle fuel made to the United States Government or any agency thereof are not exempt from the tax except with respect to distributions of gasoline made to the armed forces for use in ships or aircraft or use outside the state.

Fuel purchased for base operations cannot be acquired tax-exempt. 7/27/61.

- 1135.060 **Broker Sales to Armed Forces.** A broker who acquires fuel tax-paid from a distributor and who makes sales on his own account to his own customer under an exempt transaction involving a sale to the armed forces cannot circumvent the filing of a claim for refund of the tax with the State Controller by passing his invoices back to the distributor and by the distributor claiming an exempt distribution to the armed forces which he did not in fact make.

With respect to such transactions involving deliveries by an agent broker or dealer to aircraft of the armed forces pursuant to distributor's contract of sale, the individual exemption certificates given the agent by the armed forces personnel covering each delivery into the fuel tanks of the aircraft must be submitted by the agent to the distributor for support of the distributor's exempt distribution. 8/24/61.

**DISTRIBUTIONS TO THE UNITED STATES (Contd.)**

**1135.070 Buck Act Authorizes Taxing.** One statute of the United States (commonly referred to as the Buck Act) grants limited consent to a state to impose a gasoline tax upon an instrumentality of the United States. That act provides in part:

“(a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes so levied, shall be paid to the proper taxing authorities of the State, Territory, or the District of Columbia, within whose borders the reservation affected may be located.”

If the fuel in question was acquired in California, the distributor selling the gasoline to the Navy is liable for the tax. 11/27/68.

**1135.090 Claim Exemptions Timely.** The exemption should be taken for distributions of motor vehicle fuel to the United States armed forces for use in ships or aircraft or for use outside the state, on the return for the month in which the distribution occurs and is reported on line 1 of the return.

Regulation 1134 does not require that the certificate be first obtained before claiming the exemption on the return. 6/7/67.

**1135.130 Distributions of Motor Vehicle Fuel (Aviation Gasoline) to the California National Guard and Army and Air Force, National Guard Bureau.** The tax applies to the distribution of motor vehicle fuel (aviation gasoline) sold to the California National Guard for use in aircraft and the exemption provided in Subsection (d) of Section 7401 of the Revenue and Taxation Code with respect to distributions to the armed forces of the United States applies only when the California units of the Army National Guard or Air National Guard are activated into the service of the United States.

Distributions of motor vehicle fuel to the Department of the Army and the Air Force, National Guard Bureau, purchased under a procurement contract of the United States, paid for with federal appropriated funds, and issued by the United States Property and Fiscal Officer to the Army National Guard or Air National Guard for use in aircraft of the United States constitute distributions to the armed forces of the United States for use in aircraft and are exempt from tax under Subsection (d) of Section 7401 of the Revenue and Taxation Code. It is immaterial to the exemption whether the fuel is delivered by the distributor to the United States Property and Fiscal Officer or on his order to the Army National Guard or Air National Guard, or that the fuel is used in such aircraft by these components of the armed forces when not in the service of the United States. 12/30/63. (Interpretation)

**DISTRIBUTIONS TO THE UNITED STATES (Contd.)**

**1135.160 Exempt Sales to Armed Forces by a Dealer.** In the case of exempt sales of fuel to the armed forces under Section 7401(d) of the Revenue and Taxation Code, which do not involve a credit card but rather a direct sale by a dealer for his own account, the dealer should sell the fuel at a tax-included price and bill the agency. The agency deducts the tax and provides an adjustment voucher, together with an exemption certificate. These two documents establish that the sale is to the armed forces. The dealer in turn files a claim for refund with the State Controller for the amount of tax involved. 10/30/69.

**1135.220 Fueling U.S. Aircraft—Certificates.** A qualified distributor contracts with the armed forces of the United States for the sale of aviation gasoline exempt from tax for use in aircraft. An airport dealer, acting for the distributor, delivers the gasoline into the fuel tanks of the armed forces aircraft pursuant to the distributor's contract of sale.

The distributor should make certain that all exemption certificates taken by the airport dealer from the personnel of the armed forces are turned over to him to support his exemption from the tax on the distribution. This is to prevent the claiming of exempt distributions under a master contract of sale for which a single exemption certificate is executed by the armed forces, and the possible use of the individual certificates taken by the airport dealer for the same distributions, to secure an unlawful tax refund. 8/24/61.

**1135.460 Military Flying Clubs.** Military flying clubs are not entitled to purchase gasoline exempt from tax under the provisions of subsection (d) of Section 7401 of the Revenue and Taxation Code of California, as such clubs are not regarded as the "armed forces", nor is the fuel sold for use in aircraft operated by the armed forces for a military purpose.

This is consistent with I.R.S. Revenue Ruling 67-120. 5/5/67.

**1135.510 NASA Not Exempt.** The National Aeronautics Space Administration is not a part of the armed forces entitled to exemption from the fuel tax under Section 7401 (d) of the Revenue and Taxation Code. 4/13/61.

**1135.540 Off Highway Use.** Gasoline purchased for use in military vehicles or for resale at service stations located on military reservations must be acquired subject to the tax. If gasoline so purchased is used for a purpose other than propulsion of motor vehicles on the highways, the claim for refund of the tax paid indirectly may be filed with the State Controller. 10/29/65.

**1135.730 Taxable Distributions to U.S. Government.** The California motor vehicle fuel (gasoline) tax is imposed upon the distributor on the initial distribution of the fuel within the state.

The tax applies to all fuel distributed to the United States Government for general purposes regardless of the kind of vehicles in which it is used. 6/20/62.

**1135.780 U.S. Government Exemption Limited.** The motor vehicle fuel (gasoline) tax is an excise tax imposed upon the distributor for the privilege of manufacturing or importing motor vehicle fuel and distributing it within the state.



**DISTRIBUTIONS TO THE UNITED STATES (Contd.)**

The tax is not imposed upon the consumer, and hence is not a direct tax upon governmental agencies (*Rio Grande Oil Co. v. City of Los Angeles*, 6 Cal.App.2d, 200).

The several branches of the United States armed forces must acquire subject to the tax gasoline purchased for use in motor vehicles. If the fuel is used in the operation of motor vehicles on restricted roads within a military reservation (not including public highways traversing a military reservation), a claim for refund of the tax may be filed. 4/27/66.

**DISTRIBUTOR**

*See also Drip Gasoline Producer; Imports.*

**1140.015 Air Carrier A Distributor for Navy Fuel Purchases.** An air carrier operating under contract with the United States Navy who purchases his motor vehicle fuel from the navy with respect to which there has been no prior distribution on which tax has been paid, is a distributor within the meaning of Sections 7306 and 7305 (d) of the Revenue and Taxation Code. 9/30/71.

**1140.020 All Applicants Not Licensed.** The licensing provisions of the statute (Section 7451 et seq.) do not authorize the issuance of distributor's licenses to everyone who applies for such a license and furnishes the required bond. Distributor's licenses may be issued only to persons who come within the definition of "distributor" within the meaning of Section 7306 of the Revenue and Taxation Code.

In considering the definition of "distributor" regard must be had to the structure of the taxing act. Thus, the tax applies when the first transfer in this state is made by a refiner or importer. Such refiners and importers are "distributors" within the definition of Section 7306 of the Revenue and Taxation Code.

Accordingly, the tax applies with respect to the first transfer of the fuel in this state by a refiner or importer unless the particular circumstances are such that an exemption applies. 10/17/50.

**1140.090 Common Carrier Pipelines.** A company engaging as a common carrier pipeline operator in the transportation of petroleum products belonging to others, is not required to hold a distributor's license, nor does the law pose any requirements to account to the state for the fuel delivered through the pipeline. 11/21/60.

**1140.100 Contaminated Fuel.** A distributor's license is required for the acquisition of motor vehicle fuel with respect to which there has been no prior taxable distribution in this state. Consequently, brokers and persons other than distributors cannot lawfully deal in contaminated aviation fuels purchased from the armed forces unless such fuels do not constitute motor vehicle fuel under the law. Subsequent to December 1, 1955, jet fuels have been excluded from the category of motor vehicle fuel. Aviation gasoline, however, is classified a motor vehicle fuel. 6/21/56.

**DISTRIBUTOR (Contd.)**

**1140.220 Fuel Tanks of Railroad Cars.** A distributor's license is not required under Section 7306 of the Revenue and Taxation Code where gasoline is placed into fuel tanks aboard railroad maintenance cars in Nevada, and the railroad cars are used in road bed maintenance and rail replacement work extending into California from Nevada points, since the gasoline is placed into use in the operation of the railroad in interstate service prior to the entry of the cars into California and the gasoline is not delivered in bulk to storage facilities in California. 11/7/62.

**1140.320 Importer Passing Title Before Entry.** Where the contemplated sale of gasoline by tanker load occurs outside the state and title to the gasoline passes to the purchasing distributor prior to the unloading of the gasoline from the vessel in this state, the distributor who purchases the gasoline and receives it within the state would be the importer. The vendor is not entitled to hold a distributor's license. 8/12/66.

**1140.430 Licensed Distributor.** This is the basic distributor's license. The account number is shown on distributor account listing without any special designation, thus: MD-AH-07-000999.

He may engage in any of the activities of "distribution" as defined in Section 7305 of the Revenue and Taxation Code.

Includes producers of natural or drip gasoline and some refiners of their own or other's crude oil.

The only motor vehicle fuels this licensee may acquire without tax by purchase or exchange are:

1. Imports by the licensee (Section 7305(c) of the Revenue and Taxation Code)
2. Natural gasoline (Section 7401 (a) of the Revenue and Taxation Code)
3. Purchases for sale to the United States Armed Forces for use in ships or aircraft or use outside the state (Section 7401 (e) of the Revenue and Taxation Code and Regulation 1134)
4. Fuel from United States armed forces tax-free stock, whether contaminated or otherwise (Section 7305(d) of the Revenue and Taxation Code)
5. Defueling aircraft containing tax-free fuel (Section 7305(d) of the Revenue and Taxation Code) 2/20/73.

**1140.440 Limited Distributor.** The account number is shown on the distributor account listing with an "L" after it, thus: MD-AH-07-000999-L.

These licensees are limited to transactions described in subsection (c) or (d) of Section 7305 of the Revenue and Taxation Code, as set forth in the third sentence of Section 7451 of the Revenue and Taxation Code. This group is composed largely of importers of motor vehicle fuel. It also includes "persons" who buy contaminated aircraft fuel from the United States Government, who fuel their aircraft from U.S. armed services tax-free fuel supplies, or who defuel aircraft in connection with repair operations.

Limited distributors are not eligible to apply for qualified status. 2/20/73.

**DISTRIBUTOR (Contd.)**

**1140.630 Qualified Distributor.** The account number is shown on the distributor account listing with a “Q” after it, thus: MD-AH-07-000999-Q.

These licensees are distributors who have posted the bond required by Section 7401 (c) of the Revenue and Taxation Code and established to the satisfaction of the Board that this bond, together with property to which the lien imposed by Section 7871 of the Revenue and Taxation Code attaches, is sufficient security to assure payment of the taxes as they become due. Granting of qualified status is a separate step in the licensing process.

In addition to the activities described in Section 7305 of the Revenue and Taxation Code, they may acquire without tax, under Section 7401(c) of the Revenue and Taxation Code, motor vehicle fuel with respect to which there has been no previous taxable distribution.

This is the license held by refiners who buy or exchange fuel. This group may also include an aircraft manufacturer or certificated or licensed carrier by air who uses for the propulsion of aircraft an average of 40,000 or more gallons of motor vehicle fuel per month. 2/20/73.

**1140.690 Sales of Imports to Foreign Purchaser.** If a person acquires gasoline from a licensed distributor in California and resells it to a foreign purchaser from points in California, the distribution to that person by the licensed distributor is taxable.

If, instead of purchasing the gasoline from a distributor in California, the person intends to import the gasoline from a point outside the state, he will be required to apply for a distributor's license instead of a broker's license. The license will be limited to the importation of gasoline under Section 7305(c) of the Revenue and Taxation Code and will be issued upon posting of a surety bond of an amount determined by the Board, but not less than \$1,000 nor more than three times the estimated monthly tax liability not in excess of \$500,000. 4/18/66.

**1140.700 Service Station Dealers Importing.** Service station dealers do not qualify for the distributor's license except to the extent that they may engage in the importation of motor vehicle fuel. Whenever a service station dealer so qualifies for the distributor's license, it is the policy of this Board to limit the license as provided in Section 7451 of the Revenue and Taxation Code. A service station dealer cannot acquire a distributor's license by importing fuel and thereby become authorized to purchase motor vehicle fuel ex-tax from distributors within this state. 6/16/65.

**DISTRIBUTOR'S INVENTORY AND STOCK RECORD—Regulation 1171****DRIP GASOLINE PRODUCER—Regulation 1107**

**1145.100 Collection Trap Operator.** Persons who operate traps for the collection of natural gasoline come within the category of “distributor” under the Motor Vehicle Fuel License Tax Law and are required to hold a distributor's license and post a bond for the minimum amount of \$1,000. 11/20/63.

**DRIP GASOLINE PRODUCER (Contd.)**

- 1145.320 **Incidental Production of Drip Gasoline.** If oil or gas that is produced is sold and delivered to another person as it leaves the well, and that producer does not operate a trap or other apparatus for the collection of natural gasoline, he is not required to be licensed as a distributor. He also is not subject to the law if all the natural gasoline produced is fed back into a crude oil pipeline or into crude oil in a storage tank. 2/24/65.
- 1145.690 **Sale of Condensate.** A person producing condensate or wet gas from the production of natural gas or crude oil and selling it, is required to make application for a distributor's license and post bond in the minimum amount of \$1,000, notwithstanding that all sales of the condensate are made to a qualified distributor. 1/13/69.

## E

## EXCHANGES

*See Stock Transfers*

**EXEMPT DISTRIBUTIONS TO DISTRIBUTOR QUALIFIED TO  
ACQUIRE MOTOR VEHICLE FUEL EX-TAX—Regulation 1133**

**1176.120 Delivered on Order of Owner.** Section 7401(c) of the Revenue and Taxation Code was incorporated in the law to permit a royalty owner, who acquires gasoline through the processing by a refinery of crude oil in which the royalty owner has a share interest, to dispose of the gasoline to a qualified distributor without the royalty owner being required to hold a distributor's license.

An unqualified distributor cannot acquire ownership of gasoline ex-tax from another distributor in this state by purchase or otherwise either directly or by exchange, notwithstanding that delivery is made on the order of that distributor to another distributor who is authorized to acquire the gasoline ex-tax. This is because a taxable distribution first occurs on the sale or exchange to the unqualified distributor and the law does not exempt such transactions. 4/17/63.

**1176.130 Deliveries by Agent.** Where pursuant to a contract of sale and the deliveries are made on behalf of a qualified distributor to another qualified distributor, by its dealer, which is acting as an agent to service the accounts of the distributor, Section 7401(c) of the Revenue and Taxation Code is applicable, as the gasoline is being sold by the distributor to another customer distributor, rather than by the dealer.

The provision in Regulation 1133 which states "once the tax has applied to the distribution of any motor vehicle fuel, the provisions of Section 7401(c) of the Revenue and Taxation Code have no application to any subsequent transactions in that fuel;" is incorporated to cover usual transactions which involve subsequent sales of fuel by a purchaser who has acquired gasoline taxpaid. 7/13/61.

**1176.140 Distribution to Broker.** Under no circumstances can a broker qualify to buy motor vehicle fuel ex-tax from a distributor under the provisions of Section 7401(c) of the Revenue and Taxation Code. Exemption contained in that subsection relates solely to distributions made by a distributor to another distributor who has met the requirements of Subsection (c) and been authorized by the Board to acquire motor vehicle fuel ex-tax.

Regulation 1133 deals solely with ex-tax distributions made to qualified distributors, and nothing contained therein can be construed as applying to distributions made to a broker. 3/8/62.

**1176.180 Exchanges.** Successive transfers of title between distributors or brokers under exchange agreements are distributions. Although all of the distributions are exempt from tax if every person involved in the series of transactions is a qualified distributor, each distributor must report its distribution of the fuel as though the distributor in fact received and delivered the fuel. If one of the persons involved in the series of transactions is a broker, or a distributor not

**EXEMPT DISTRIBUTIONS, ETC. (Contd.)**

qualified to receive tax-free fuel, the distribution to that person is subject to tax and all subsequent distributing in the series must be on a tax-paid basis.

If the distributors and brokers have reported all distributions of fuel and paid any applicable tax on such exchanges, the settlement of exchange balances is not a further distribution provided there is no transfer of title or possession of fuel in the settlement.

The following example of transactions between Distributor "A" and Distributor "B" illustrates a nontaxable settlement of exchange balances. Distributors A and B enter into a contract for Distributor B to supply 100,000 gallons of regular gasoline to Distributor A for the month of August at a specified price. Distributor A is to supply Distributor B with 100,000 gallons of unleaded fuel for the month of August at a specified price. During the month of August, Distributor A only distributes 75,000 gallons to Distributor B, and Distributor B only distributes 80,000 gallons to Distributor A. Consequently, at the end of August, Distributor B still owes Distributor A 20,000 gallons, and Distributor A still owes Distributor B 25,000 gallons. Distributors A and B do not need further fuel; therefore, Distributor A pays Distributor B for the price differential on the 5,000 gallons. This latter transaction merely settles the account balances. It is not a transfer of title or possession of fuel and is not a distribution. Distributor A should report its distribution of the 75,000 gallons, and Distributor B should report its distribution of 80,000 gallons.

Transactions such as paying the price differential on the 5,000 gallons merely to effect settlement of exchange balances should not be included in any return or report filed with the Board. 6/13/79; 11/2/87.

**1176.320 Imports by Limited Distributor.** A licensed motor vehicle fuel distributor limited to the importation of motor vehicle fuel may import tanker loads of gasoline and redistribute the fuel within the state ex-tax to a licensed California distributor who is qualified by this Board to acquire untaxed gasoline from another distributor. 8/12/66.

**1176.430 Licensed Distributor Not a Qualified Distributor.** Section 7305(d) of the Revenue and Taxation Code of the Code does not contemplate the issuance of a distributor's license to bring into effect the exemption found in Section 7401(c) of the Revenue and Taxation Code. Section 7401(c) of the Revenue and Taxation Code cannot be the reason for issuing a distributor's license. It can have effect only after a license has been issued to one person as a distributor and another person who also is a distributor sells motor vehicle fuel to the one who holds a distributor's license. 10/23/50.

**EXEMPT SALES OF JET FUEL—Regulation 1137**

**1180.020 Armed Forces Only U.S. Exemption.** Sales of jet fuel to the armed forces of the United States are exempt from tax. Sales to other governmental agencies are subject to the jet fuel tax. 7/6/70.

**1180.040 Bonded Jet Fuel.** Sales of bonded fuel which meet the requirements of exemption from sales tax would not be subject to the jet fuel tax. 2/10/71.

**EXEMPT SALES OF JET FUEL (Contd.)**

**1180.170 Engine Overhaulers.** A company which is engaged in the job of overhauling and repairing aircraft is excluded from the definition of “aircraft jet fuel user” even though it does the repairing and overhauling only on part of the aircraft—the engine. The exclusion will apply whether the company does its repairing and overhauling while the engine is affixed to the airplane or while it is detached from the airplane. 10/21/71.

**1180.180 Exemption Certificates.** If the “aircraft jet fuel dealer” has accepted the exemption certificate in good faith, he will not be held responsible for the tax. Any tax due will be assessed by the Board against the “aircraft jet fuel user”.

If the “aircraft jet fuel dealer” has reason to believe that the exemption certificate is not valid, he should charge tax on his sales. 7/6/70.

**1180.200 Foreign Governments.** Foreign governments are not included within the definition of a “person” in the Motor Vehicle Fuel License Tax Law, therefore, sales of jet fuel to foreign governments are not subject to the jet fuel tax. 7/6/70.

**1180.220 Fueling Aircraft Does Not Exempt.** A person who merely fuels aircraft is not engaged in the business of . . . servicing of aircraft, within the meaning of Section 7374 of the Revenue and Taxation Code. To consider a dealer as a “non-user” would be inconsistent with the provisions of Section 7380 of the Revenue and Taxation Code which imposes the tax on fuel used by a dealer. 11/25/69.

**1180.440 Local and State Governments.** Sales to local or state governmental agencies are subject to the jet fuel tax. 7/6/70.

**1180.470 Manufacturers, Etc.** Section 7374 of the Revenue and Taxation Code provides that an “aircraft jet fuel user” does not include:

“A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft or modifying, overhauling, repairing, maintaining or servicing aircraft” (underscoring added).

The effect of this section is to provide an exemption to a person based on the type of business in which he is engaged, not an exemption for specific uses of fuel. Sales of jet fuel to a “non-user” are not taxable. There is no restriction in the law which would require that the fuel be used by a “non-user” in a specific manner. Under these circumstances a person engaged in repairing, construction, etc. would not incur any tax liability unless they sold fuel to a user. 11/25/69.

**1180.590 Primary Activity Not Governing.** A person operating an air taxi under a commercial operator license issued by the FAA, also overhauls, repairs, maintains and services helicopters and is a licensed jet fuel dealer. He does not qualify for an exemption from the jet fuel tax on self-consumed jet fuel under Section 7374(a) of the Revenue and Taxation Code because the license issued by FAA is not a certificate of public convenience and necessity. However, he does qualify for exemption under Section 7374(b) of the Revenue and Taxation Code.

**EXEMPT SALES OF JET FUEL (Contd.)**

The law does not require that a firm be engaged primarily in the repair and maintenance of aircraft to qualify for exemption under Section 7374(b) of the Revenue and Taxation Code. 3/16/70.

- 1180.660 Refund of Jet Fuel Tax Through Supplier.** There is no provision in the law for refunds to the purchaser for the tax paid on jet fuel. However, if a person can qualify as an exempt purchaser under Section 7374 of the Revenue and Taxation Code and Regulation 1137, he may purchase jet fuel tax free.

If a person is an exempt purchaser of jet fuel and has paid the tax, he should notify his suppliers and furnish them with exemption certificates as indicated in Regulation 1137. The suppliers can then claim refunds with the Board of Equalization. The suppliers will then be in a position to reimburse purchaser for the tax that was inadvertently collected. 10/2/70.

- 1180.670 Repairers and Servicers.** If a person is engaged in the business of overhauling, repairing, maintaining or servicing aircraft, he is not an "aircraft jet fuel user" and the tax does not apply to sales to him. The fact that this fuel may be used in other than a manufacturing or repairing operation does not affect the exemption.

However, the person must be "engaged in the business of overhauling, repairing, etc.". A person repairing and servicing his own planes is not "engaged in the business of overhauling, repairing, etc.".

A person does not have to be engaged in the business of servicing turbine powered aircraft to qualify under Section 7374(b) of the Revenue and Taxation Code. If he repairs piston-powered aircraft, he would still qualify for the exemption. 7/6/70.

- 1180.710 Supplemental Air Carriers.** A supplemental air carrier holding a certificate of public convenience and necessity under 49 U.S.C.A. Section 1371(d)(3) qualifies for the exemption under Section 7374(a) of the Revenue and Taxation Code. 10/24/69.

- 1180.720 Certificate of Public Convenience and Necessity.** In order to be excluded from the definition of an aircraft jet fuel user under Revenue and Taxation Code Section 7389(a), an air common carrier must hold a certificate of public convenience and necessity issued by the United States or a foreign government. The certificate of public convenience and necessity issued by the U.S. Department of Transportation qualifies, but the Air Carrier Certificate issued by the Federal Aviation Administration does not qualify as a certificate of public convenience and necessity issued by the United States. 04/03/03.



**F****FOREIGN CORPORATION**

1185.010 **Foreign Corporation.** A foreign corporation is included in the definition of a person under the Motor Vehicle Fuel License Tax Law. The Secretary of State's office requires a foreign corporation to obtain a certificate of qualification pursuant to Section 2105 of the Corporation Code prior to transacting intrastate commerce. However, the Motor Vehicle Fuel License Tax Law does not require a foreign corporation to obtain a certificate of qualification from the Secretary of State's office before the Board can issue a Motor Vehicle Fuel License permit. 08/25/86.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

**G****GROSS RECEIPTS**

1146.350 **Jet Fuel Tax Included in Gross Receipts.** Section 6051 of the Revenue and Taxation Code imposes a sales tax on the gross receipts from retail sales of retailers of tangible personal property in California. The local sales tax also applies. There is nothing in the Revenue and Taxation Code to exclude the jet fuel tax from the gross receipts subject to the sales tax. In fact, Section 6357 of the Revenue and Taxation Code, which does exclude from such measure the motor vehicle fuel tax on gasoline used for propelling motor vehicles on the highways of California, specifically provides that the aircraft jet fuel tax is not to be excluded. (See Sales and Use Tax Regulation 1598.) 8/11/71.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

## H

**HIGHWAY—Regulation 1111**

1275.470 **Military Reservations.** Highways within a military reservation which are constructed and maintained by the United States Government and which are closed to the use of the public except by express permission of the military authority, are not public highways.

A highway under the jurisdiction of the state or a local governmental agency and which traverses a military reservation is a public highway if it is open to the use of the public. 6/20/62.

1275.510 **National Park Roads.** The roads within the Yosemite National Park are not public highways, as they are open to the use of the public only by express permission and upon the payment of a fee. (*Yosemite Park and Curry Co. v. Department of Motor Vehicles*, 177 Cal.App.2d, 448)

Sequoia and General Grant National Parks fall in the same category as Yosemite National Park. 8/1/60.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

## I

**IMPORTS**

*See also Distributor.*

**1317.700 Shipper—Owners Must Be Licensed.** A company engaging in the transportation of petroleum products as a common carrier is not required to hold a license under the Motor Vehicle Fuel License Tax Law.

Shipper-owners who import the fuel into this state are required to hold a distributor's license if the product imported is gasoline or motor vehicle fuel.

If diesel fuel only is imported, the distributor's license is not required. 12/14/60.

**IMPOSITION OF TAX**

*See Distributor.*

**INDIANS**

**1610.100 Sales by Indians on Indian Land.** Generally, when an Indian tribe is the retailer of motor vehicle fuel sold at a service station located on its reservation, the Motor Vehicle Fuel License Tax is not imposed directly on the Indian tribe, but is instead imposed further up the chain of distribution and is included in the cost of the fuel in the same way as other business expenses of the motor vehicle fuel distributor. 7/15/97.

**ISSUANCE OF A LIMITED DISTRIBUTOR'S LICENSE—Regulation 1110**

**1323.050 Broker Not Entitled to Distributor's License.** A broker who intends to import motor vehicle fuel will, upon application and furnishing of bond, be issued a limited distributor's license. Limited distributors are not eligible to apply for qualified status under Section 7401(c) of the Revenue and Taxation Code.

If after issuance of a distributor's license, we find that the licensee is not engaged in importing motor vehicle fuel, the license will be cancelled or revoked, and a broker's license will be issued. 11/23/60.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS



**J****JEOPARDY DETERMINATIONS**

1347.020 **Administrative Remedies Controlling.** The taxpayer had not exhausted his administrative remedies by posting a bond or security for the amount of jeopardy determination as a prerequisite to the filing of a petition for redetermination by the Board of the jeopardy determination. (*People v. Sonleitner*, 185 Cal.App.2d 350)

**JET FUEL TAX**

*See Exempt Sales of Jet Fuel.*

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

## L

**LOSSES PRIOR TO DISTRIBUTION—Regulation 1116**

1433.180 **Excessive Losses—Security Ratings.** A satisfactory security rating by our Security and Theft Unit will not relieve a distributor from accountability for excessive losses, should they subsequently occur. The existence of acceptable security practices is not a guarantee against thefts, illegal or unrecorded distributions, or against unexplainable losses. 1/23/63.

1433.440 **Loss Prior to Key-Lock Distribution.** A delivery of 17,000 gallons of gasoline was made to a key-lock station and inadvertently put in a tank whose valves were open. The gasoline drained from the tank, was absorbed in the ground, and no portion was recovered.

The loss should be reported on one of the blank lines in the credit section of the inventory reconciliation. Statements of persons having knowledge of the loss should be documented and filed with the return. Any other evidence regarding the loss should be retained. 9/29/70.

1433.730 **Tax-Paid Fuel Redistribution.** A limited distributor, importing gasoline is responsible for the tax on its distributions of the fuel from its storage. Normal losses in storage prior to distribution are not taxable. The limited distributor is liable for the tax on its distributions to its affiliated service station corporation. The tax applies to the volumetric measure on single deliveries of less than 5,000 gallons. 5/13/66.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

**M****MONTHLY RETURN OF DISTRIBUTOR—Regulation 1151****MOTOR VEHICLE FUEL—Regulation 1101**

*See also Drip Gasoline Producer.*

**1471.470 Motor Vehicle Fuels Include:**

Alkylate blending stock. 3/14/62.

Crude Naphtha, which apparently is a straight-run naphtha. 11/16/65.

Amolite White Naphtha; UTOCO Lighting Naphtha; UTOCO Stove and Lighting Gasoline. 9/15/61.

The 74 octane unleaded straight gasoline offered as marine fuel constitutes motor vehicle fuel subject to the State Motor Vehicle Fuel License Tax Law. 7/10/61.

Stove and Lamp Fuel (white gasoline). 12/19/61.

**1471.510 Not Motor Vehicle Fuels:**

Industrial Benzol, Netration Benzol, and Thiophene Free Benzol are not being used either as a motor vehicle fuel or as a blending stock in the manufacture or refining of motor vehicle fuels in the State of California. Consequently, these products are not motor vehicle fuel within the meaning of Section 7304 of the Revenue and Taxation Code and Regulation 1101. 4/15/53.

Isobutane in its pure chemical state does not constitute motor vehicle fuel. It is generally used in the alkylation process to make alkylate, a high octane gasoline blending stock, which constitutes motor vehicle fuel. 1/4/63.

Iso-Octane in its pure chemical state is not practically or economically usable for propelling motor vehicles. Accordingly, it does not come within the category of motor vehicle fuel. Its principle use is as a standard reference fuel for testing purposes. 4/15/69.

Isopropyl Ether (IPE) is a specialty compound used in the manufacture of motor vehicle fuel as an additive. This product is not used or usable as a motor vehicle fuel and, consequently, does not come within the category of motor vehicle fuel under Section 7304 of the Revenue and Taxation Code. 2/10/60.

Shell 380/600 Alky and Iso-Pentane do not come within the category of motor vehicle fuel under the Motor Vehicle Fuel License Tax Law and, accordingly, distributions of these products are not subject to the tax. 12/17/62.

Turbine fuel is not a motor vehicle fuel and is not subject to motor vehicle fuel tax. 3/17/70.

**1471.030 Appliance Fuels and Naphtha.** It would not be administratively sound to exclude the appliance fuels from the classification of motor vehicle fuel and to include the straight run naphtha, as these are essentially the same product. If such classification were to be followed, a distributor could distribute the naphtha ex-tax by calling it appliance fuel. On the other hand, if it is distributed as naphtha subject to tax, the purchaser who resells the naphtha as pressure appliance fuel would deny the consumer refund of the tax if the fuel is used for the purpose for which it was sold.

**MOTOR VEHICLE FUEL (Contd.)**

Heavy naphtha having a distillation range with an initial boiling point above 300 degrees and end point above 400 degrees which are distributed as cleaners naphtha or solvent, thinners, or rubber solvent are excluded from the category of motor vehicle fuel. Such naphtha are not usable as motor vehicle fuel without further processing. However, naphtha which has an initial boiling point near 100 degrees and end point near 350 degrees, and octane rating near 70 is substantially equivalent to gasoline and must be classified as motor vehicle fuel. 4/13/64.

- 1471.240 **Gasoline Blending Stock and Chemical Additives.** “Gasoline blending stock” includes platformate and reformate or any blending stock which has a distillation range substantially equivalent to gasoline under American Society for Testing and Materials specifications D-439 and which is used as a base or blending stock in the manufacture of gasoline distributed as motor vehicle fuel.

“Gasoline blending stock” does not include such chemical additives or solvents as toluene, xylene, and cumene which, in their pure chemical state, are not “practically and economically” usable as motor vehicle fuel and do not have a distillation range substantially equivalent to gasoline 7/30/64. (Interpretation)

- 1471.430 **Lawnmower Fuel—Gallon Cans.** Motor vehicle fuel consisting of a blend of white unleaded gasoline and proper proportions of lubricants and additives, is packaged in one gallon containers by a licensed distributor to the order of a wholesaler of lawnmowers. The latter resells the mix to retail outlets for resale by them as fuel for two cycle lawnmower engines. Motor Vehicle Fuel License Tax applies when the distributor sells the blended product to the wholesaler. 3/7/62.

- 1471.750 **Two Cycle Engine Fuel.** Two cycle engine fuel called outboard motor fuel consisting of a blend of petroleum naphtha and lubricating oil constitutes motor vehicle fuel under the Motor Vehicle Fuel License Tax Law.

Persons engaged in such blending operations are distributors and would be required to apply to the Board for distributor licenses.

The tax would apply to the total gallons of premixed fuel distributed by them including the lube oil component in the blended product and they would be entitled to deduct from their total gallonage distributions the gallons of naphtha purchased tax-paid. 10/16/59.



**N****NATURAL GASOLINE SALES TO LICENSED DISTRIBUTORS—  
Regulation 1131**

1495.700 **Separate Reporting Not Warranted.** There is no basis under the law for treating natural gasoline any differently than refined gasoline. The fact that natural gasoline may be distributed ex-tax to any general as well as qualified distributor, while refined gasoline may be distributed ex-tax only to qualified distributors, is not a distinction which would afford a basis for establishing separate reporting requirements. 7/25/62.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

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**O**

**OWNER'S RETURN OF PROCESSING TRANSACTIONS—Regulation**  
**1154**

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

**P****PENALTIES**

**1575.200 Failure to File Timely Returns.** Section 7657 of the Revenue and Taxation Code authorizes the Board to grant relief from the penalties imposed by Sections 7655 of the Revenue and Taxation Code (delinquent returns) and 7660 of the Revenue and Taxation Code (no returns filed) when failure to make a timely return is due to reasonable cause and circumstances beyond the control of the taxpayer.

Section 7727 of the Revenue and Taxation Code provides that the Board may waive the penalty of 25% if failure to secure a distributor's license is due to reasonable cause. We have construed that penalty as being in substitution of the 10% penalty under Sections 7655 and 7660 of the Revenue and Taxation Code. However, if the 25% penalty is removed, the 10% penalty arises and may be waived by the Board under the provisions of Section 7657 of the Revenue and Taxation Code. Interest cannot be waived. 11/23/66.

**PROCESSOR'S RETURN OF DISTRIBUTION—Regulation 1153**

**1588.590 Processing Agreements.** A limited distributor furnished crude oil to a refiner who was a qualified distributor. After refining the crude oil, the refiner retained possession of the fuel but transferred title to the limited distributor. Thereafter the limited distributor transferred title to a qualified distributor, and the refiner transferred possession of the fuel to that qualified distributor on the order of the limited distributor.

Motor Vehicle Fuel License Tax does not apply to any of these transactions. The transfer of title to the fuel to the limited distributor, who furnished the crude oil from which it was refined, without transferring possession of the fuel is not a distribution under Section 7305(b). The transfer of possession by the refiner to the qualified distributor is a distribution under Section 7305(b), but is exempt under Section 7401(c) and Regulation 1153(c). 6/13/79.

**PRODUCER'S PURCHASE RECORD—Regulation 1173****PRODUCER'S SALES RECORD—Regulation 1174****PRODUCER'S STOCK RECORD—Regulation 1172**

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS



**R**

**RECIPIENT'S RETURN OF PROCESSING TRANSACTIONS—Regulation 1155**

**RECORDS**

*See Distributor's Inventory and Stock Record; Producer's Stock Record; Producer's Purchase Record; Producer's Sales Record; Broker's Purchase Record; Broker's Sales Record; Records of Aircraft Jet Fuel Dealer.*

**RECORDS OF AIRCRAFT JET FUEL DEALER—Regulation 1177**

**RETURNED SALES OR CONSIGNMENTS AND INVOICE  
CORRECTIONS—Regulation 1120**

**RETURNS AND PAYMENTS**

*See Monthly Return of Distributor; Weekly Return of Distributor; Processor's Return of Distribution; Owner's Return of Processing Transactions; Recipient's Return of Processing Transaction; Monthly Report of Producer; Monthly Report of Broker*

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS

## S

**SHIPMENTS OUTSIDE OF THE STATE—Regulation 1132**

**1692.070 By Distributor's Trucks.** A distributor is entitled to exemption from the California tax on gasoline which he actually exports from the state either in his own truck or by common carrier when the gasoline is consigned to a customer outside the state and title to the gasoline passes upon delivery at the out-of-state point. 12/14/64.

**1692.170 Exports.** A distributor may claim an export exemption for fuel which the distributor ships out-of-state by common carrier pursuant to the contract of sale. This is true regardless that title may have passed within the state to a non-licensee. 6/13/79.

**1692.210 From Army Terminal.** The Form 1384 issued by the Port Transportation Office, Port Packing Center, Oakland Army Terminal, through a government contractor to a distributor which identifies the product and its destination as outside the continental United States, will qualify as a document for exemption under the provisions of Regulation 1132 (a)(3).

We will consider the Port Transportation Officer as being the forwarding agent. 10/22/71.

**1692.320 In-State Delivery to Foreign Purchaser.** Gasoline sold and delivered to a foreign purchaser in California subsequently transported outside California by the purchaser is a taxable distribution, and the foreign purchaser must file a claim for refund with the Controller.

If a distributor dealing in untaxed gasoline by reason of importation, subsequently exports the gasoline to a foreign purchaser either by his own facilities or by common carrier such distribution would not be taxable. 4/18/66.

**1692.590 Pipeline Carrier Documentation.** Interstate common carriers of gasoline by pipeline are apparently subject to Section 20 (11) of the Interstate Commerce Act.

This section imposes on a carrier the duty of issuing a proper receipt or bill-of-lading for each shipment of goods delivered to him for transportation and, under the Commission's rules, bills-of-lading must contain sufficient information to enable interested parties to verify the freight charges. In order for the freight charges to be verified, a bill of lading would at least have to contain the name and address of consignor and consignee and the exact amount and description of the commodity shipped. 6/24/71.

**1692.660 Refund for Tax-Paid Exports.** If a person buys gasoline and takes delivery in California, the distributor is required to pay the tax. If the buyer exports the gasoline to another state, he can claim a refund under Section 8101 (b) of the Revenue and Taxation Code with the State Controller upon submission of proof satisfactory to the Controller that the gasoline has been exported and that the tax due the other state has been paid. 12/14/64.

**SHIPMENTS OUTSIDE OF THE STATE (Contd.)**

1692.850 **Withdrawal From Export Bond.** We are unable to find any authority for the Bureau of Customs to authorize the withdrawal of domestic gasoline under export bond for sale and delivery to customers within the United States except as supplies to vessels or aircraft clearing for foreign ports. 2/7/66.

**STOCK TRANSFERS—Regulation 1106**

1704.590 **Pipeline Delivery.** For purposes of Section 7401, subdivision (a)(2), and Regulation 1132, subdivision (a), a “carrier” means a person who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. Delivery by pipeline from a California distributor to an out-of-state location, pursuant to a contract of sale, is considered delivery to a common carrier for shipment out of state for purposes of Regulation 1132(a)(2). The carrier may be hired by either the purchaser or the seller and title may pass in this state.

The distributor must retain documentation to support the delivery of the fuel at an out-of-state location. Documentation may include, but is not limited to, bills of lading, delivery tickets, or meter readings. The distributor has the burden of providing the proper substantiation and documentation to support the exemption.

The fuel is not considered exported, regardless of documentary evidence held by the distributor, if it is:

- (1) diverted in transit, or
- (2) not delivered out of state

Beginning on July 1, 1986, distributors and brokers subject to the Motor Vehicle Fuel License Tax are required to collect prepayment of the retail sales tax from their purchasers on the first distribution and all subsequent transfers of motor vehicle fuel in this state. Since the sales tax prepayment requirement is linked with the motor vehicle fuel license tax, the exportation of the motor vehicle fuel from this state to an out-of-state location is exempt from the requirement of precollection of sales tax under Section 6480.1, of the Sales and Use Tax Law.

In the event the distributor bills the motor vehicle fuel tax in error on an exempt export distribution, the distributor may reverse the entry within the same reporting period. The distributor shall file together with its Distributor Motor Vehicle Fuel Tax Return, in which the billing correction is reflected, a copy of the credit memorandum. 10/20/89.

## T

**TAX-PAID MOTOR VEHICLE FUEL BLENDED, COMPOUNDED OR REDISTILLED—Regulation 1119****TEMPERATURE-CORRECTED DISTRIBUTIONS—Regulation 1121**

*See also Allowable Losses of Commission Agents.*

**1727.040 Broker Accountable for Tax.** Section 7356 was added to the Revenue and Taxation Code with the intention of making the provisions of Section 7354 with respect to payment of the tax by the volumetric measure, except as otherwise provided, equally applicable to brokers as to distributors.

In effect, the broker is accountable for the tax to the same extent as a distributor except that the broker deals in tax-paid motor vehicle fuel and is allowed a credit against his tax liability for the amount of the tax paid on his purchases of fuel. If the broker purchases gasoline in quantities of 5,000 or more gallons (1000 or more gallons, eff. Jan. 1, 1989) and is invoiced on the temperature-corrected gallonage, he will be given credit against his tax liability only for the tax on the temperature-corrected gallonage. 10/5/61.

**1727.050 Broker Consignment Distributions.** A broker who redistributes motor vehicle fuel by making consignments for sale incurs liability for the tax on gains at the time the fuel is delivered to the consignee. If the consignee is invoiced for and pays for the fuel on the basis of volumetric gallons sold by the consignee, the broker is liable for the tax on the gain represented by the difference between the tax-paid gallons purchased temperature-corrected and the volumetric gallons delivered to the consignee.

The broker is not liable for the tax on any gain which may occur after the fuel is delivered to the consignee, nor may any loss in storage or handling incurred thereafter be deducted by the broker from any gain on which he incurred liability for the tax at the time the fuel was delivered on consignment.

A broker is liable for the tax on gains resulting from sales or consignments for sale made to lessees of service stations owned by the broker, or to service stations operated as a separate business by a partnership of which the broker is a member. 1/22/64. (Interpretation)

**1727.060 Broker Pays on Net Gain.** Distributors are not taxed on normal evaporation or handling losses. Similarly, brokers should not be taxed on losses of tax-paid fuel in storage and handling by not allowing losses as offsets against gains. The law takes only the net gain when a broker sells more fuel than he purchases tax-paid. 12/27/63.

**1727.250 Gross Gallonage Invoicing Prevails.** Under no circumstances would the Board accept tax payment on a temperature-corrected basis if the gasoline is sold and invoiced to the customer on a gross gallonage basis.

Temperature-corrected gallonage is accepted as the measure of the tax only when the distributor sells gasoline to a customer and bills on a price which is computed on the net temperature-corrected gallonage. 2/15/60.

**TEMPERATURE-CORRECTED DISTRIBUTIONS (Contd.)**

1727.510 **No Unjust Enrichment.** A broker who purchases gasoline from a distributor temperature-corrected and resells the gasoline to his customers on a volumetric basis will incur liability for the tax on the excess of the gallons sold over the gallons purchased. Also, if he purchases gasoline on a temperature-corrected basis and resells it to his customers in single deliveries of less than 5,000 gallons (less than 1,000 gallons. eff. Jan. 1, 1989) on the same temperature-corrected basis, he would be liable for the tax on the volumetric gallons delivered.

The purpose is to prevent loss of tax revenue which occurs through the payment by the distributor of the tax on the temperature-corrected gallonage and the resale of the fuel by the wholesaler or retailer on the volumetric gallonage basis, which is the measurement on which the tax is ultimately paid by the motoring public. 8/25/61.

1727.590 **Pre-Merger Losses.** "A Oil Co." was merged into "B Transport Co." by a statutory merger; both licensed brokers. "A" had a history of inventory gallonage losses; "B" had a history of either no inventory gains or losses or slight gains. "B" attempted to offset the pre-merger inventory losses of "A" against its post-merger gains.

A reasonable and proper practice appears to be to allow a carry forward of such losses to be offset against later gains so that the tax will apply only to net gains of the same business activity, but not to allow those losses against post-merger gains of a different business activity. California Corporations Code Section 4115; *Libson Shops Inc. v. Kuenler*, 353 U.S. 382. 6/28/71.

1727.600 **Purchases From Brokers.** Under Section 7356 of the Revenue and Taxation Code, a broker is liable for the tax on gains only with respect to the gasoline purchased from a distributor, and not with respect to gasoline purchased from another broker. 3/19/63.

Beginning January 1, 1979, a broker (or a distributor) is liable for the tax on gains with respect to gasoline purchased taxpaid from a broker or a distributor. Section 7356.5, operative January 1, 1979. 6/13/79.

1727.690 **Service Station Dealers Gains.** Section 7356 of the Revenue and Taxation Code provides that any distributor or broker who acquires motor vehicle fuel from another distributor under a taxable distribution measured by the temperature-corrected gallonage, and who redistributes the fuel in whole or in part on a volumetric gallonage basis, is liable for the tax on the gallonage redistributed which is in excess of the gallonage acquired. Under the provisions of this section, the Board is not empowered to require service station dealers who are not brokers or distributors and who are able to buy gasoline in quantities of 5,000 gallons or more (1,000 gallons or more, eff. Jan. 1, 1989) temperature-corrected to pay the tax on their gains. 3/19/63.

1727.700 **Service Stations of Distributors and Brokers.** If a distributor operates service stations, the tax is paid by the distributor on the volumetric measure of the gasoline sold through the stations, as such sales will involve deliveries in quantities of less than 5,000 gallons (1,000 gallons eff. Jan. 1, 1989).

**TEMPERATURE-CORRECTED DISTRIBUTIONS (Contd.)**

A broker must also pay the tax on volumetric gallonage of gasoline sold and delivered in such quantities including his service station sales, unless the gasoline is sold under the exceptions to the volumetric measure as provided in Section 7355 of the Revenue and Taxation Code in which event the tax will apply to the temperature-corrected gasoline if the gasoline is sold and invoiced to the customer on that basis. 10/5/61.

**1727.710 Settlement Terms Control.** The Board concluded that the temperature-corrected delivery slips were not invoices used as a basis of settlement under the sales and security agreements with distributor's dealers. Settlement was made on the basis of the volumetric pump readings recording the dealer's sales to their customers. The petitioner is not entitled to report its sales to the dealers on a temperature-corrected basis. 5/13/68.

**1727.740 Temperature-Corrected Basis Limited.** Under the terms of Regulation 1121, if the temperature-corrected basis is to apply at all to a given customer it must be applied to all single deliveries of 5,000 or more volumetric gallons (1,000 or more gallons eff. Jan. 1, 1989) to that customer during a twelve-month period. The only deliveries to that customer during that period which could be taxed at the volumetric gallonage would be single deliveries of less than such quantity. A single delivery is a delivery made to one location, not to two or more locations.

Since Regulation 1121 requires use of temperature-correction on a customer by customer basis, the 12-month period is on a customer to a customer basis and may not have varying starting dates for various stations of a single customer. 7/27/71.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS



## U

**USE BY DISTRIBUTOR—Regulation 1105**

*Donations by Distributors, see also Credits and Refunds.*

**1781.550 Off-Highway Use.** The exemption provided by Section 8101 (a) of the Revenue and Taxation Code extends to any off-highway use regardless of the distance traveled. The oil companies are not required to pay tax on gasoline used in company trucks while being operated on private property.

Fuel consumed in pumping gasoline through the use of a power take-off likewise is not subject to tax. 8/21/69.

**1781.560 Off-Highway Use.** The percentage of off-highway use computed from a test period of one month may be used as a basis for making reports. The percentage of exempt usage, however, will be subject to review by the Board's auditors, and adjustments, if indicated, will be made.

The test of one month's usage is made at least once in a period of eighteen months, but such tests may be made more frequently if operating conditions are materially changed. 2/7/61.

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## MOTOR VEHICLE FUEL LICENSE TAX ANNOTATIONS



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**W**

**WEEKLY RETURN OF DISTRIBUTOR—Regulation 1152**

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ANNOTATIONS PUBLISHED

<i>Number</i>	<i>Annotation Title</i>	<i>Edition</i>
<u>1180.720</u>	<u>Certificate of Public Convenience and Necessity</u> <u>4/03/03 .....</u>	<u>2003–3</u>

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1094.660	Refunds on Aviation Fuel 10/16/67 .....	M98-1
1692.180	Export Certificate Information 8/30/96 .....	M98-1

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